United Nations A/ES-10/PV.25

General Assembly

Emergency Special Session

Official Records

25th meeting
Friday, 16 July 2004, 3 p.m.
New York

President: The Hon. Julian R. Hunte ..... (Saint Lucia)

The meeting was called to order at 3.15 p.m.

Agenda item 5 (*continued*)

Illegal Israeli actions in occupied East Jerusalem and the rest of the Occupied Palestinian Territory

Note by the Secretary-General (A/ES-10/273)

Draft resolution (A/ES-10/L.18)

Mr. Danforth (United States of America): The draft resolution before us and the opinion of the International Court of Justice that it endorses point away from a political solution to the Israel-Palestinian conflict that would embody the vision of two States, Israel and Palestine, living side by side in peace and security. We must reject the draft resolution.

If there is to be a solution to the tragedy of the Middle East, it must be political, entailing the agreement by both parties to a reasonable compromise. The judicial process is not the political process, and the International Court of Justice was not the appropriate forum to resolve this conflict.

The nature of a political solution is balance. The claims of each side must be accommodated, or there can be no agreement. The draft resolution before us is not balanced. It is wholly one-sided. It does not mention the threat that terrorists pose to Israel. It follows a long line of one-sided resolutions adopted by the General Assembly, none of which has made any contribution to peace in the Middle East. Last year, the General Assembly adopted more than 20 such resolutions.

The draft resolution before us is the very opposite of the measures outlined in the road map to peace, endorsed by the Security Council. In implementing the road map, the two parties would achieve progress through reciprocal steps by the two parties in the political, security, economic, humanitarian and institution-building fields. The destination is a final and comprehensive settlement of the Israel-Palestinian conflict and the emergence of an independent, democratic and viable Palestinian State, living side by side in peace and security with Israel.

The Court itself stressed that the only way forward is through a negotiated solution, and emphasized the importance of the road map in this respect. The draft resolution before us points in the opposite direction.

Some members have pointed out that the opinion of the International Court of Justice is complex, and that it requires careful analysis. The rush to pass this draft resolution, just one week after the Court's opinion and after only hours of debate, denies us the time for reflection such a critical subject deserves.

Paragraph 139 of the Court's opinion especially deserves very careful consideration before we vote, for Member States that vote to accept the advisory opinion will vote to accept paragraph 139. Paragraph 139 can be read as giving a very troubling interpretation to Article 51 of the United Nations Charter, as a number of judges said.

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A. Corrections will be issued after the end of the session in a consolidated corrigendum.

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The Court begins the paragraph quoting Article 51 as follows:

> "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

The Court then adds this confusing paragraph interpreting Article 51:

> "Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State. However, Israel does not claim that the attacks against it are imputable to a foreign State."

So the Court opinion, which this draft resolution would accept, seems to say that the right of a State to defend itself exists only when it is attacked by another State, and that the right of self-defence does not exist against non-State actors. It does not exist when terrorists hijack planes and fly them into buildings, or bomb train stations or bus stops, or put poison gas into subways.

I would suggest that, if this were the meaning of Article 51, then the United Nations Charter could be irrelevant at a time when the major threats to peace are not from States but from terrorists.

The draft resolution is one-sided and moves away from the political process that leads to a two-State solution. The draft resolution adopts a confusing and troubling interpretation of Article 51. The United States will vote against the draft resolution.

Mr. Olhaye (Djibouti): The comprehensive ruling on 9 July by the International Court of Justice against Israel for constructing a suppression barrier or a wall within the occupied Palestinian territories goes deep into the heart of the Arab-Israeli conflict, unequivocally reconfirming and restating that fact that Israel persists in its illegal occupation of Palestinian territory and that the construction of settlements on that territory is illegal and represents a gross breach of international law.

The building of the suppression barrier, and in particular the route it is taking, is the clearest manifestation yet of the departure from the Armistice line of 1949, thus prejudging the outcome of future negotiations by rendering the two-State solution physically impossible to implement.

Unsurprisingly, Israel's prompt reaction to the judgement of the Court was that it did not see itself bound by it — dismissing it as a politically motivated manoeuvre. The argument presented by Israel that the barrier was temporary and did not create a new political border was found inconsistent with reality.

The Court rightly declares, therefore, that it cannot remain indifferent to certain fears expressed that the wall will prejudge the future frontier between Israel and Palestine and that Israel may integrate the huge settlements in the West Bank and their means of access.

The issues raised by the Court also include the fear that Palestinian communities may be completely encircled and the fact that the wall deprives a significant number of Palestinian of the freedom to choose their residence by forcing many to leave and thus tending to alter the demographic composition of the occupied Palestinian territories.

Let us be very clear: no one is casual about, dismissive of, or indifferent to Israel's security or right to exist. We have no conflicting views about this. Simply put, that is not an issue. The Court is amply clear on that point. While accepting Israel's right to defend its citizens against attack, the Court considers that Israel cannot rely on the right of self-defence or on a state of necessity which would preclude the wrongfulness of the construction of the wall. It continues on to say that the barrier constitutes breaches by Israel of its obligations under the applicable humanitarian law and that it cannot be justified by military exigencies or by the requirements of national security or public order.

Contrary to Israel's characterization, the Court's decision is not tantamount to a denial of its right to defend itself. That is a travesty of truth and common sense.

Israel can call this barrier by any other name, or justify it on any ground, but no one can dispute the fact that this barrier causes incalculable hardship and suffering to the Palestinian people by cutting through their farms, homes, businesses and schools — in sum, their livelihoods. It is working towards the creation of a de facto annexation of Palestinian land through the

creation of a fait accompli on the ground that could well become permanent.

The Court's judgement was remarkable in its explicitness, breadth and virtual unanimity. The vote coincides almost perfectly with last year's General Assembly resolution, which, by an overwhelming majority, demanded that Israel stop and reverse construction of the barrier. About two weeks ago, the Israeli Court, to its credit, issued a ruling that ordered the Government of Israel to change the course of the wall in certain locations, because of the damage done to many Palestinian people.

For the Court, however, not only is the construction illegal where it is, but it must be halted and reversed — that is, torn down, and the appropriate compensation must be paid to the aggrieved Palestinians.

The Economic and Social Council report issued in June, entitled "Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the occupied Palestinian territory, including Jerusalem, and of the Arab population in the occupied Syrian Golan" (A/59/89), exposes in a graphic manner the deaths and injuries, particularly of children, last year in the Palestinian territories. The report details the arbitrary arrests and detentions, population displacement, the destruction and the confiscation of property, mobility restrictions and closure policies, among other things. The picture described is so horrifying and inhumane that it calls into question Israel's status as a modern industrial State that prides itself on being the only democracy in the Middle East. As a sovereign nation that is a Member of the United Nations — to which it owes its founding and existence — Israel is well-advised to adhere to the Charter scrupulously — like all of us — to behave like a normal Member and to commit itself to the restoration of Palestinian rights. That is the only basic requirement of the Assembly. Living with fear or coexisting with terror for generations should not be the preferred option, nor is it a smart choice. Israel knows better. It owes its citizens sound, sane and safe policies directed towards achieving genuine and lasting peace, security and harmony through recognition and respect of the rights, dignity and existence of other peoples.

Security for Israel is not a stand-alone proposition. Rather, it is intertwined and interdependent with Palestinian rights and freedom. Therefore, without tangible progress in the implementation of the road map, both parties, I am afraid, are doomed to mutual destruction, eternal strife and an uncertain future.

The international community cannot afford to remain a mere, passive bystander to this long-festering conflict, which has put a whole nation in jeopardy and submerged an entire region in pervasive instability and hostility. The task is urgent. The Quartet must take a genuine and active leadership role in building international consensus on this highly critical conflict. We all have a vital stake in an outcome that is realistic, honourable, fair and comprehensive.

Mr. Pak Gil Yon (Democratic People's Republic of Korea): The Democratic People's Republic of Korea welcomes the advisory opinion delivered by the International Court of Justice (ICJ) last Friday, which ruled that Israel's construction of a wall in the occupied Palestinian territory is illegal.

The advisory opinion is a victory for the Palestinian and Arab peoples and all the people of the world who support the just cause of the Palestinian people. It also gives great encouragement to the Palestinian people, who are striving to exercise their legitimate national rights.

The advisory opinion of the Court, which found Israel's building of the wall to be illegal, provides a legal basis for a fair solution to the question of Palestine. It eloquently attests to the fact that peace in the Middle East can never be achieved as long as Israel continues its occupation and its oppressive policies. The use of force in international relations cannot be a solution to any issue. It is important that Israel, as the occupying Power, should respectfully accept the advisory opinion and comply with its international obligations.

First, Israel must halt construction on the wall immediately, dismantle the sections of the wall already built and make reparations for all damages caused, as the advisory opinion indicates.

Israel should end its undisguised State terrorism carried out in the name of retaliation for terrorism and unconditionally withdraw its forces from the occupied Palestinian territory. It should immediately end the construction and expansion of Israeli settlements, the expulsion of Palestinian populations, the destruction of infrastructure and the plundering of cultural property. Other countries involved in the question of Palestine should also respect the Court's advisory opinion.

Even today, Israel is in a position to commit inhumane crimes against the Palestinian and Arab peoples without limitation. That is because certain countries actively back Israel politically, militarily and materially.

In that regard, the instigating and defending of the violent actions of Israel by taking advantage of privileged positions in the Security Council should be put to an end at once, and the Security Council should restore its impartiality and the confidence placed in its work by making the substantial contribution of taking further steps to put an end to the illegal situation created by the wall.

The cause of the Palestinian and Arab peoples of restoring their lost territory, their human rights and their right to self-determination is just. The Democratic People's Republic of Korea takes this opportunity to express its solidarity with and full support for the Palestinian people's just cause of recovering their legitimate national rights, including their right to return to their homeland and their right to establish an independent State with Jerusalem as its capital, and expresses its solidarity and support for the struggle of all Arab peoples for a fair solution to the Middle East question.

The Democratic People's Republic of Korea wishes to express its expectation that the tenth emergency special session will duly contribute to the halting of Israeli atrocities against Palestinians and to the realization of the legitimate national rights of the Palestinian and Arab peoples.

Mr. Mubarez (Yemen) (*spoke in Arabic*): Allow me at the outset, Sir, to express our appreciation for your excellent leadership of the General Assembly and your efforts to enable the Assembly to shoulder its full responsibilities.

We are indeed delighted to participate in this debate on the International Court of Justice advisory opinion in response to resolution ES-10/14. The opinion was a courageous decision characterized by transparency, responsibility and great respect for the law. It is clear and firm in addressing the issue of the racist wall, an embodiment of segregation, annexation and aggression. I also wish to hail the courage of the members of the Court who upheld the truth in the face of great pressure.

We do not need to dwell on the details of the opinion, which, in brief, states that the racist wall and all its attendant consequences run contrary to international law and violate the basic rights of the Palestinian people. All the Members of this Organization are therefore called upon to compel Israel to remove the wall and to compensate those affected.

There is no doubt that such a decision from the highest legal authority of the United Nations has a number of dimensions and important ramifications, including the fact that international law and norms remain references governing the directives and behaviour of Governments in the international arena. The Palestinian people needed just such a decision to reaffirm their rights, which are being violated daily by the Israeli occupying authorities. Indeed, we all needed such a decision at a time when the logic of might is on the verge of devouring the right and usurping the force of law.

Israeli settlement colonialism represents a setback for the progress of civilization in this era and a return to concepts that peoples have rejected after lengthy struggle. The Court's decision affirms the contradictions between Israel's practices and the spirit of the age, its contravention of international law and its violations of basic Palestinian rights. The Republic of Yemen welcomes the opinion as a just position based on international law and a victory for the values of justice and right.

The General Assembly's resolution referring the issue to the International Court of Justice was a wise one, affirming first and foremost the need to resort to the law that must govern the behaviour of political entities and individuals alike. While the Court has given concrete evidence of its transparency and sense of responsibility in handing down its opinion on the construction of the wall, the operative part of the draft resolution reminds the United Nations and its two main organs, the General Assembly and the Security Council, of their responsibility to reverse this illegal situation. The General Assembly's current efforts offer it the opportunity to resume its role in international decision-making.

The Republic of Yemen wishes to stress the need for the international community to assume its full responsibility to constrain Israel to implement the ruling in order to restore the rights of the Palestinian people and the credibility of the United Nations.

It is perfectly clear that Israel's aim in building the wall has nothing to do with its security needs. It is,

as the Court notes, to create a new de facto situation on the ground, to annex more of the occupied territories and to have a direct impact on the outcome of any peaceful settlement. The main avenue for stopping this illegal Israeli practice must be a just and peaceful solution guaranteeing an end to the occupation and enabling the Palestinian people to exercise its national rights. In that respect, the Republic of Yemen urges the Quartet to expedite the implementation of the road map and to reject any attempt by Israel to circumvent it. We repudiate any action by Israel that does not comply with the road map.

In conclusion, the Israeli Government's rejection of the International Court of Justice's advisory opinion and the insistence of its Prime Minister on pursuing the construction of the wall reflect Israel's disdain and ridicule for the logic of law within this Organization. They also represent a challenge to the international community itself. We are all therefore called on to strive seriously and resolutely to put an end to the ongoing Israeli aggression by adopting the draft resolution before us.

Mr. Jenie (Indonesia): Let me first join others in expressing condolences to the people and the Government of Austria on the passing away of the President of their country, Mr. Klestil. Our sympathy also goes to the people and Government of Nicaragua for all the suffering they are enduring due to the recent natural disaster.

We associate ourselves with the statements made by the Chairmen of the Non-Aligned Movement and the Organization of the Islamic Conference.

Let me also express to you, Sir, our appreciation for reconvening this emergency special session of the General Assembly on the question of Palestine to consider the advisory opinion of the International Court of Justice on the legality of Israel's construction of a separation wall. By doing this, you have once again demonstrated your commitment to the cause of peace in the Middle East.

Last week, the International Court of Justice offered a historic opinion on this issue, categorically declaring Israel's construction of the wall in the occupied Palestinian territory illegal and contrary to international law. It further said that the construction must cease and those parts of it in the occupied territory be dismantled immediately, and that Israel must make reparations for damage caused.

The International Court of Justice, which is the United Nations court, made the ruling within its jurisdiction and competence, which it unanimously determined. Its advisory opinion now confirms what most of the world has known from the beginning: the construction of the wall is illegal and constitutes a cynical affront to the peace process. It also proved that the action of the General Assembly at this session last December to refer the matter to the International Court of Justice for its interpretation was correct. After all, it will be recalled that, last October, the General Assembly demanded that Israel stop and reverse the construction.

The advisory opinion also confirms that all the actions of Israel in the occupied Palestinian territory against Palestinians are both outrageous and illegal and therefore must be condemned by the international community. It is an important and triumphant achievement for the Palestinian people, whose sufferings have multiplied over the years at the hands of the Israeli military occupation.

This confirmation represents a historic legal, ethical and political weight that Israel ought to respect and comply with. Further, the International Court of Justice also said that the General Assembly and the Security Council should determine what steps to take to terminate the illegal situation that the construction of the wall has brought about. It is therefore the duty of the international community to ensure that the Court's ruling be implemented. It is in view of that that we are pleased that the General Assembly is meeting in this emergency session today, because it would be wrong to permit the illegality of Israel to continue to stand for even one day more.

To begin with, the General Assembly, which asked the International Court of Justice for its advisory opinion in the first place, should formally recognize and accept the Court's opinion. The General Assembly should now demand that Israel comply with its legal obligations, as ruled by the ICJ in its advisory opinion, as well as with its responsibility towards the peace process.

My delegation would like to reiterate that the peace process remains a viable political process. The legal track became a complementary aspect only because of problems that had been created on the political track. It is our hope that all those who genuinely seek peace in the Middle East will view the

advisory opinion of the ICJ as encouragement to return to the road towards peace.

As we have done many times before, but in particular in view of the advisory opinion offered by the ICJ, my delegation urges Israel to return to the negotiating table. It is time to put a stop to all policies that breed only resentment and tension, rather than peace and progress.

In conclusion, we must commend the ICJ for its hard work and for coming to a wise, comprehensive and timely decision. My delegation hopes that, following the counsel of the ICJ, the major organs of the United Nations, particularly the General Assembly and the Security Council, will now work towards comprehensive implementation of the road map, the objective of which is two independent and viable States, Israel and Palestine, living side by side within secure and internationally recognized borders.

Mr. Haraguchi (Japan): In the written statement that Japan submitted to the International Court of Justice (ICJ) in January, Japan expressed its position that the construction of the wall inside the Green Line is negatively affecting the livelihood of Palestinians and prejudices the outcome of final status negotiations. In addition, we also expressed the view that, on the basis of the limited information available, the construction of the wall inside the Green Line appears to be in contradiction of relevant provisions of international law, and hence should be stopped. Based on that position, we find it truly regrettable that Israel is continuing to go forward with construction of the wall inside the Green Line.

We take note of the recent ruling by the Israeli Supreme Court that ordered the Israeli Government to change the route of the wall, and of the work subsequently started by the Government to alter the route. We will carefully observe the future course of action of the Government of Israel to see if changing the route will bring about an end to construction of the wall inside the Green Line. The advisory opinion that the ICJ recently issued states that the construction of the wall by Israel in occupied Palestinian territory is contrary to international law and that Israel is therefore obligated to put an end to that illegal situation. Japan expects that Israel will act appropriately in this matter.

Japan notes that a large number of innocent Israeli lives have been lost in terrorist attacks by Palestinian extremists and expresses its position that the Palestinian Authority must make the utmost effort both to improve its security capacity and to suppress terrorism.

The issue regarding the construction of the wall has arisen in the midst of the current prolonged chain of violence between Israelis and Palestinians and the state of stagnation in the implementation of the road map. Japan therefore believes that the fundamental resolution of the issue must be worked out through negotiations between the two parties and through the full implementation of the road map, which aims at realizing the vision of two States, Israel and Palestine, living side by side in peace. I take this opportunity to appeal once again to the two parties to implement their obligations under the road map in good faith. Japan will continue to do its best to support such efforts by the two parties for the attainment of peace.

Mr. Konuzin (Russian Federation) (*spoke in Russian*): The events taking place in the Middle East peace process continue to arouse deep concern in the international community. Those events require that we all continue to review how to help the parties overcome the profound mutual distrust that is preventing them from finding a way out of the impasse in the negotiations.

We share the views expressed on 13 July 2004 by Mr. Terje Roed-Larsen, Special Coordinator for the Middle East Peace Process (see S/PV.5002). Indeed, the Middle East peace process is by no means experiencing its best moment, but the hope of overcoming the crisis is far from lost. The peoples of Israel and Palestine continue to believe that a way out of the crisis will yet be found and that peace and calm will return to their land.

None of us has a ready-made formula. But the main thing is that there is a general understanding that in the current circumstances, strict compliance with the provisions of the road map and the endeavours of the Quartet of international mediators have taken on particular significance. The major advantage of their assistance is in focusing on linking the Israeli plan to exit Gaza and a portion of the West Bank with the road map.

The Quartet's ministerial-level meeting planned for September in New York is good reason to create conditions conducive to the renewal and continuation of the negotiating process, as well as to restore bilateral contacts.

We wish to point out the positive role being played by countries of the region towards a Middle East settlement, in particular by Egypt and Jordan. For our part, we shall work closely with the leadership of Israel and the Palestinian Authority.

Of course, we cannot ignore the issue of the International Court of Justice (ICJ) and the separation wall. We respect the opinion of the ICJ as expressed in its advisory opinion of 9 July 2004 with regard to the legal consequences of Israel's construction of a separation wall on Palestinian territory. It is important that the advisory opinion not be an excuse for entanglement in useless polemics, or a way of whipping up passions. We must now focus on practical matters, to move the peace process out of the current deadlock and to begin to move once again towards peace on the basis of the road map.

Mr. Danesh-Yazdi (Islamic Republic of Iran): Allow me to join previous speakers in expressing our deep condolences to the people and the Government and Austria on the passing away of His Excellency Mr. Thomas Klestil, late President of the Republic of Austria. We also extend our sympathies to the Government and the people of Nicaragua on the loss of life and the damage that the people of Nicaragua are suffering as a result of the floods there.

We consider last Friday's advisory opinion by the International Court of Justice (ICJ), the principal judicial body of the United Nations, to be a very important development in the course of the long-standing endeavours by the Palestinian people to seek their basic national and humanitarian rights. The ICJ is clear and unambiguous in finding that the construction of the wall by Israel in the occupied Palestinian territory is contrary to international law, and that therefore the construction of the wall should stop, the structure already erected should be dismantled and all relevant legislative and regulatory acts should be forthwith repealed or rendered ineffective.

The Court also holds Israel accountable for all damage caused by the construction of the wall in the occupied Palestinian territory. It further states that Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the occupied Palestinian territory. The Court observes that the obligations violated by Israel include certain obligations *erga omnes*. In that context, the court finds that all States are obliged not to recognize the illegal situation resulting from the unlawful act of wall-building activities by Israel.

The reference made by the Court to the developments that resulted in the issuance of the present advisory opinion on the issue at hand is also of great importance. The failure of the Security Council, as a result of the use of veto power by one permanent member and, consequently, the legality of the actions taken by the General Assembly are also noted by the Court in its opinion. Equally important is the fact that the ICJ observes the need for consideration by the General Assembly and the Security Council of the further action required to bring to an end the illegal situation resulting from the construction of the wall and its associated regime.

We are frequently reminded by a section of the media, as well as by some in official quarters, that the opinion expressed by the ICJ is advisory, and is thus not binding. Nevertheless, in our view, it should not be taken to mean that those specific legal obligations referred to and deemed by the Court as *erga omnes* — that is, binding on all members of the international community — are not obligatory and can be ignored at will. On the contrary, the Court explicitly notes in paragraph 149 of its opinion — which is contained in document A/ES-10/273 — that Israel is bound to comply with its obligation to respect both the right of the Palestinian people to self-determination and its obligations under international humanitarian law and human rights law.

We believe that the historic opinion rendered by the ICJ has presented us with a great opportunity to address more ardently the long-lasting Palestinian crisis, which is unfolding in one of the most volatile and unstable regions of the world. In our view, the General Assembly, which is convened today to consider the Court's advisory opinion, should not fail to seize this opportunity. A strong vote in favour of the draft resolution before the Assembly would amount to a powerful sign indicating the interest of the international community in furthering the rule of law at the international level and helping redress the gross injustice done to the Palestinian people as a result of the illegal construction of the wall in the occupied Palestinian territory.

Mr. Kirn (Slovenia), Vice-President, took the Chair.

The building of the separation wall is clearly an unlawful act that has increased hostility and heightened

the level of violence. It is indeed a deliberate attempt by the Israelis to strike another blow against any hope for genuine peace. In the wake of the issuance of the advisory opinion by the ICJ, the international community is better placed than ever to deal strongly with this aggressive and illegal act. Now there is an absolute need to translate the ruling emanating from The Hague into political actions, here and on the ground, and to defeat the ongoing organized activities aimed at preventing its implementation.

Undoubtedly, decisive action today by the Assembly in doing away with the construction of the wall and its associated regime will be a big step towards restoring the legitimate rights of the Palestinian people, thereby paving the way to putting an end to a crisis that has lasted for a very long time and that has had an effect on the whole region, as well as beyond.

Mr. Chidyausiku (Zimbabwe): Like many others who have already spoken, my delegation welcomes the advisory opinion of the International Court of Justice (ICF) regarding the legality of Israel's West Bank barrier and the need to immediately cease construction of that apartheid wall. Indeed, the victory of the Palestinian people rises higher than the Israeli wall.

The advisory opinion and the conclusions put forth by the Court constitute authoritative findings by that principal organ of the United Nations on the legal obligations arising from international law with regard to this matter. The advisory opinion is vested in international law and rooted in international humanitarian law, and it has the strength of that law. All law-abiding nations should respect the Court's opinion and comply with its provisions. The apartheid wall must be dismantled.

The General Assembly must take action on the basis of the verdict of the International Court of Justice. The wall infringes upon the right of the Palestinian people to self-determination and strengthens Israeli settlements by facilitating their extension in disregard of the fact that those settlements are illegal under international law. Furthermore, the wall destroys the economic and social basis of the lives of the Palestinian people.

The wall will not bring peace and security to Israel. Walls are the most primitive and ineffective form of defence. History is littered with examples of such failures. The only guarantee for peace and security for both the Palestinian and Israeli peoples is the realization of two States, Israel and Palestine, living side by side within secure and recognized borders, as affirmed in Security Council resolution 1397 (2002). The wall is a hindrance to the realization of that concept and the implementation of the road map promoted by the United Nations and the international community.

The Palestinian people need the international community to rein in Israel and make it comply with United Nations resolutions, as everyone else is required to do. So long as Israel does not comply with United Nations resolutions, guaranteed impunity by you-know-who, the Organization will be rendered useless and impotent. The double standard has to stop. How long, one may ask, will those with the means to end the violence look away while the Palestinian people continue to suffer? No amount of force will ever succeed in cowing a people under occupation. Let us not delude ourselves.

My delegation will vote in favour of a draft resolution that will cause the opinion of the ICJ to be implemented.

Mr. Nguyen Duy Chien (Viet Nam): On behalf of the delegation of Viet Nam, I would like to express our great appreciation for the reconvening of the tenth emergency special session of the General Assembly immediately following the issuance of the advisory opinion of the International Court of Justice (ICJ) regarding the legal consequences of the construction of a wall in the occupied Palestinian territory.

We fully associate ourselves with the statement delivered by the representative of Malaysia on behalf of the Non-Aligned Movement.

Viet Nam firmly believes that a just and lasting settlement to the Middle East conflict can be found only on the basis of the implementation of Security Council resolutions 242 (1967) and 338 (1973). We are also convinced that serious efforts must be undertaken to achieve a two-State solution that would ensure the creation of a sovereign, independent and viable State of Palestine and the existence of Israel, both living side by side in peace and security within secured and recognized borders, as envisaged in Security Council resolutions 1397 (2002) and 1515 (2003).

Proceeding from that conviction, Viet Nam has always supported the tireless efforts of the General Assembly, including its decision on 8 December 2003 to request an advisory opinion from the International

Court of Justice on the legal consequences of the construction of a wall in the occupied Palestinian territory (resolution ES-10/14). In that spirit, Viet Nam welcomes the advisory opinion rendered by the Court on 9 July 2004.

The Court's opinion has provided an authoritative answer to the question the General Assembly submitted to it. In arriving at the solid findings and indisputable conclusions contained in its opinion, the Court not only has provided good services to the international community as a whole and to the United Nations in particular, but also has performed its role as the supreme arbitrator of international legality and safeguard against illegal acts.

Undoubtedly, the opinion will greatly contribute to the just cause of finding a satisfactory solution to the Middle East conflict. Now it is time for the General Assembly and the Security Council — as stated in the last conclusion of the opinion — to consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime.

Mr. MacKay (New Zealand): The International Court of Justice has advised Israel and the rest of the world community that the wall Israel is building in the occupied territory is illegal and that Israel should stop building it. The Court's advisory opinion carries the weight of the highest judicial organ of the United Nations. In other words, it should be listened to and followed.

There is no question that the State of Israel has the right to protect its citizens. New Zealand has the greatest sympathy for those who have been killed and maimed and for their families. Both Israelis and Palestinians have been victims of the horrendous human toll that the escalation in violence over the past year has brought. We have called on the leadership of both sides to act to stop that needless suffering. But, as Israel's own courts have said, there are limitations on the actions it can take in exercising its right to self-defence.

We call upon Israel to abandon construction of a wall taking in parts of the West Bank. The detrimental effect on Palestinians who live within its path — those separated from their livelihoods or from other community facilities such as schools and hospitals — has been well documented. Israel's own courts referred to that in recommending that the route of the wall should be adjusted.

In October last year, in a statement to the Security Council (see S/PV.4841), New Zealand argued that the construction of the wall taking in parts of the West Bank would not provide long-term security for Israel. Only a final resolution, achieved through a negotiation between the two parties, will achieve that. We said then that the construction of such a wall — raising fears, as reflected in the opinion of the International Court of Justice, that it could serve to create de facto borders on the ground in advance of a negotiated solution — is serving only to undermine the peace process and the trust needed for true dialogue. The lack of momentum behind peace efforts since then has graphically illustrated that point. The separation wall on occupied territory — along with other heavy-handed tactics from Israel and the continued use of terror attacks by Palestinian extremists — has contributed to the frustrating lack of progress.

New Zealand strongly supports the efforts of the Quartet to facilitate a peace between the two parties. We call again on both Israeli and Palestinian leaders to take the opportunity offered by the international community and to re-engage in that process.

Mr. Zhang Yishan (China) (*spoke in Chinese*): The Chinese delegation welcomes the convening of the resumed tenth emergency special session of the General Assembly at the request of the League of Arab States and the Non-Aligned Movement.

On 9 July 2004, the International Court of Justice rendered its authoritative advisory opinion on the legal consequences of the construction by Israel of a wall in the occupied Palestinian territory. The Court found that the construction of the wall by Israel is contrary to international law and that Israel is under an obligation to cease forthwith the construction of the wall, to dismantle forthwith the structure situated in the occupied Palestinian territory and to make reparation to the Palestinians for all damage caused by construction of the wall. The Court also suggested that the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall, taking due account of the present advisory opinion.

We believe that safeguarding the authority of international law in the resolution of disputes in

international affairs is a shared responsibility of the international community. Although the Court's advisory opinion is not legally binding, all relevant parties should give it serious consideration. We hope that the opinion will help to promote positive developments in the Middle East peace process.

The history of the Middle East is complex. War and violence have not brought about peace; nor will the construction of the wall guarantee security for Israel. History shows repeatedly that resolving disputes through political negotiation is the only correct path towards achieving long-term peace and security in the region. The international community is now taking positive action aimed at promoting peace by breaking the impasse with regard to Palestinian-Israeli peace talks. We call upon all relevant parties to seize the opportunity to engage in dialogue and to do their utmost to restore mutual trust so that we can return to the correct path of peaceful negotiation.

The Acting President: I now give the floor to the representative of Cuba.

Mr. López Clemente (Cuba) (*spoke in Spanish*): Cuba fully supports the resumption of the tenth emergency special session of the General Assembly. Likewise, my delegation associates itself with the statement made earlier by Malaysia on behalf of the Movement of Non-Aligned Countries.

The dangerous and unacceptable construction by Israel, the occupying Power, of a separation wall on occupied Palestinian territory, including East Jerusalem, adds to the long history of occupation, aggression, illegal settlement, massive, flagrant and systematic human rights violations, State terrorism, extrajudicial executions, economic suffocation and physical and psychological harm to the Palestinian people by Israel.

Despite the numerous appeals by the international community to Israel to put an end to the violence and halt and reverse the construction of the wall, which has involved the confiscation and destruction of Palestinian land and resources, the disruption of the lives of millions of defenceless civilians and the annexation of vast swaths of territory, the occupying Power is continuing to escalate its aggression, making the possibility of achieving a just and lasting peace in the region increasingly remote.

The advisory opinion on the building of the wall issued on 9 July by the International Court of Justice gives support to the claims made by many Member States during a number of General Assembly and Security Council meetings.

The opinion does not allow for ambiguity. The construction of the wall being built by Israel on occupied Palestinian territory, including East Jerusalem and its environs, is illegal and violates the norms and principles of international law and the relevant Security Council and General Assembly resolutions.

The inadmissibility of the acquisition of territory by force, an accepted principle of international law, was clearly reaffirmed by the Assembly in its well-known resolution 2625 (XXV). Thus the international community has always refused to recognize the illegal Israeli settlements and the annexation by Israel of East Jerusalem and the Syrian Golan, as reflected in Security Council resolutions 465 (1980), 478 (1980) and 497 (1981).

Israel is seeking to present the construction of the wall on occupied Palestinian territory as a security measure. But the wall has in fact been erected — as can be seen from the official map — with the purpose of enclosing a significant portion of the total area of the West Bank, including agricultural land, water resources and villages. That amounts to de facto annexation. The security situation is being used as a crude pretext for Israel's territorial expansion.

Israel's actions show that it is once again adopting a position that will obstruct any genuine peace process, while the creation of new physical divisions in the occupied Palestinian territory makes the possibility of achieving a just, final settlement of the conflict even more remote.

Violence and the use of force cannot bring about the resolution, so long hoped for by the world, to a conflict that could have been resolved many years ago had the Security Council been able to act decisively and — above all — had the paralysing and complicit vetoes of the United States not prevented appropriate action from being taken to bring about the withdrawal of Israel from all the occupied territories and to achieve peace in the Middle East region — the peace to which we all aspire.

Cuba reaffirms its resolute support for the cause of the Arab peoples and expresses its absolute solidarity with their struggle and their resistance against foreign occupation. We reaffirm that a just and

lasting peace in the Middle East can be achieved only if the Israeli occupation is brought to an end and if the Palestinian people can exercise their legitimate right to establish an independent State with its capital in East Jerusalem; if all the Arab occupied territories are returned and Israel withdraws from the Gaza Strip, the West Bank and the Syrian Golan to the line of 4 June 1967; and if all Israeli provocations in southern Lebanon cease, the return of the Palestinian refugees is assured and the illegal Israeli settlements are removed, pursuant to Security Council resolution 465 (1980).

The General Assembly and the Security Council must take the necessary steps to ensure compliance with the legal obligations defined by the Court.

Each new stone that is laid in the continuing construction of the wall will intensify the illegal Israeli occupation and perpetuate the system of apartheid established by Israel in the occupied Palestinian territories. This will increasingly militate against the possibility of achieving a negotiated, just and lasting settlement to the Palestinian-Israeli conflict.

The construction of the wall must cease immediately. Those parts that have already been built should be demolished without delay. The Palestinian people must be compensated for the serious harm done to them, and their legitimate rights must be fully restored.

For those reasons, Cuba has joined in sponsoring the draft resolution submitted under this item and calls upon Member States to vote in favour of it.

Mr. van den Berg (Netherlands): I have the honour to take the floor on behalf of the European Union. The candidate countries Bulgaria, Romania, Turkey and Croatia, the countries of the Stabilization and Association Process and potential candidates Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia and Montenegro and the European Free Trade Association country Iceland, member of the European Economic Area, align themselves with this statement.

The advisory opinion of the International Court of Justice on the legal consequences of the construction of a wall in the occupied Palestinian territory will need to be studied carefully.

The European Union, while recognizing Israel's right to protect its citizens from terrorist attacks, has demanded that Israel stop and reverse the construction of the barrier inside the occupied Palestinian territory, including in and around Jerusalem, which is in contravention of the relevant provisions of international law.

The President returned to the Chair.

The European Union underlines that the political process, as laid down in the road map, is of overriding importance. The European Union reiterates its conviction that the political process represents the only route to achieving a negotiated two-State solution, agreed upon between the parties, which would result in a viable, contiguous, sovereign and independent Palestinian State, existing side by side in peace with an Israel living within recognized and secure borders.

Mr. Cengizer (Turkey): I am speaking on behalf of the Organization of the Islamic Conference (OIC).

Facilitating the establishment of a lasting and secure peace settlement in the Middle East is the shared goal of the international community. To attain that goal, the international community must cultivate a productive dialogue that paves the way for cooperation. Otherwise, we fear that the turmoil and conflict that has reared its ugly head in the Middle East will continue and grow.

The International Court of Justice has reached a groundbreaking decision regarding the legal consequences of the construction of a wall in the occupied Palestinian territory. The Court's advisory opinion responds in a clear and sound manner to the question put to it by the General Assembly. Furthermore, the opinion accords with the beliefs of an overwhelming majority of the international community and with the position of the OIC.

We believe that the Court's opinion is based on an impartial legal analysis of actions on the ground. The legality of Israel's actions has been questioned because the wall is being constructed on occupied territory — an action which is inconsistent with the Fourth Geneva Convention.

Although the Court's ruling is non-binding, it should still be embraced, as a stance that clarifies the reach and extent of international humanitarian law and the spirit of human rights protection.

Given the problem that the continued construction of the wall creates for peace, stability and security, we believe that the international community cannot ignore this issue. We believe that it is the duty

of all United Nations organs to reiterate that the basic parameters of a solution are solid and must not be shaken by any de facto unilateral action on the ground. Instead, the goal must be to swiftly revitalize the negotiation process.

Indeed, the Organization of the Islamic Conference (OIC) issued a communiqué on 14 July 2004, in which it said,

> "The International Court of Justice is of the view that the question concerned is absolutely of a legal character, and it responds to it in a clear and soundly justified manner.
>
> "The construction of the wall and the attendant regime are declared to be contrary to international law. All the legal consequences are drawn therefrom. Israel is under the obligation to end this construction, to dismantle portions already constructed and to annul laws and decrees issued in this respect. All damages caused by the construction of this wall should be compensated. All other States are requested to refuse all forms of assistance for the maintenance of the situation thus created by Israel. They all have to work together to compel Israel to respect international humanitarian law.
>
> "The Court insists on the illegality of the wall in and around East Jerusalem and on the obligation of respecting free access to the holy places. It also makes the Palestinian people's right to self-determination a central argument and condemns the wall since it constitutes a serious hindrance to the exercise of that right.
>
> "This extremely important opinion, rendered by 14 votes against one, is an indisputable and defensible indication of what should be the strict application of international law with regard to the Palestinian cause and therefore contributes to indicating the road to peace."

While consistently rejecting terrorism and while not denying the right of all States to fight against that scourge, the OIC believes that this position should in no way be construed as condoning the violation of the legitimate rights of others.

Accordingly, we believe that the wall in its present form and with its future plans for construction is not a healthy solution. The barrier undermines the basic vision of Israelis and Palestinians living side by side, in their respective States, in safety and security. It strengthens the perception of an unjust Israeli occupation and restricts the basic human rights of hundreds of thousands of Palestinians.

In conclusion, it is abundantly clear that these circumstances cannot enhance Israel's security in the medium and long terms. The focus must remain on the road map, and Israel must acknowledge that safety and security can reign supreme only when a peaceful settlement is reached.

Mr. Adekanye (Nigeria): The Nigerian delegation wishes to express appreciation to you, Mr. President, for convening the resumed tenth emergency special session of the General Assembly. We join previous speakers in expressing our condolences to the Government and the people of Austria on the death of President Thomas Klestil. We also express our sympathy to the Government and the people of Nicaragua over the losses sustained in that country as a result of the recent flooding.

Nigeria associates itself with the statement made by the representative of Malaysia on behalf of Non-Aligned Movement. We recall that at the 23rd meeting of the tenth emergency special session, held in December 2003, the General Assembly, in accordance with Article 96 of the United Nations Charter, by resolution ES-10/14 decided to request the International Court of Justice to render an advisory opinion on the legal consequences of the construction of the wall by Israel on the occupied Palestinian territory. The Secretary-General, in his note contained in document A/ES-10/273, transmitted to the General Assembly the advisory opinion of the Court, confirming that the advisory opinion was rendered on 9 July 2004.

It is the decision of the General Assembly that the Palestinian issue shall be settled in all its aspects in a satisfactory manner on the basis of international legitimacy. In response to the request of the Assembly, the International Court of Justice determined, by a vote of 14 to one, that the construction of the wall by Israel in the occupied Palestinian territory is contrary to international law and that Israel is under the obligation to stop its breaches of international law. It also determined that Israel should stop the construction of the wall. The Court further determined that Israel is under the obligation to make reparations for damage caused by the construction of the wall and that all States are under the obligation not to recognize the

situation arising from the occupation of Israel of the Palestinian territory.

In resolution 2625 (XXV) of 1970, the General Assembly reaffirmed the illegality of the acquisition of territory by the threat or the use of force, as well as the inherent right of all peoples to self-determination. This is to avoid the situation of a fait accompli which, if allowed or condoned, could result in the de facto annexation of land.

It is trite to state that the Israeli-Palestinian conflict has lasted too long and, regrettably, has almost assumed a permanent nature. The parties concerned and the international community should not allow this situation to continue. It is therefore our view that nothing — however desirable or justifiable it may appear to any of the parties to the conflict — should be done which would worsen an already charged and volatile situation. With that in mind, we call on Israel to honour its obligations under international law and the Charter of the United Nations and to accept the findings of the International Court of Justice. That, in our view, would foster and brighten the prospects for sustainable peace between the parties and in the Middle East in general.

However, while we call on Israel to honour its obligations as a member of the international community, we recognize that this in itself, without further action, will not be enough to bring sustainable peace to the Middle East. In that regard, we also recognize that it will take the parties to the conflict to make peace, as unilateral action, even in good faith, by one party alone may not necessarily result in genuine peace. Accordingly, we call on both Israel and Palestine to end all acts of discord and violence forthwith and to restart the peace process, as outlined in the road map. Consequently, the two parties should summon up the necessary political courage and resume negotiations in a spirit of flexibility and compromise. It is only when that is done that there will be true, genuine and lasting peace, resulting in the envisioned two States, Israel and Palestine, living side by side with each other. That, in our view, will usher in the sustainable peace in the Middle East for which we have long been waiting.

Mr. Dauth (Australia): Australia regrets that on 9 July the International Court of Justice delivered an advisory opinion on Israel's security barrier. Australia voted against General Assembly resolution ES-10/14, which referred the matter to the Court. We remain of the view that the resolution unfairly isolated a single issue in a complex conflict; that it served no purpose, given the nature and content of resolutions already adopted by the Assembly; that it would politicize the Court; and that it would distract the parties — as is happening — from the urgent need to resume negotiations in order to resolve the tragic and long-running Israeli-Palestinian dispute.

Australia urges Israel and the Palestinian Authority to meet their commitments under the United Nations-endorsed road map to Middle East peace and to move towards a two-State solution which would see Israel and a State of Palestine living side by side in peace, security and prosperity. Australia notes that the International Court of Justice, in its advisory opinion, recognized the importance of negotiations under the road map and the need for those efforts to be encouraged.

Mr. Sharma (Nepal): I thank you, Mr. President, for convening the resumed tenth emergency special session of the General Assembly to consider the note by the Secretary-General dated 13 July 2004 transmitting the advisory opinion of the International Court of Justice on the legal consequences of the construction of a wall in the occupied Palestinian territory (A/ES-10/273).

Focusing on the very narrow question of the wall, the International Court did not find any legal justification for Israel's construction of that wall and has placed an obligation on Israel to make reparations for all damages caused by the construction of the wall in the occupied Palestinian territory, including in and around East Jerusalem. The Court has asked the United Nations, and especially the General Assembly and the Security Council, to consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the advisory opinion of the Court.

Nepal fully supports the opinion of the Court, and urges the United Nations to take urgent measures to address the issue raised by the International Court of Justice.

But the question is much broader and more complex than the issue of the wall. The bigger question is how we can ensure that the two peoples find a modus vivendi, a way of living together. His Majesty's

Government of Nepal has all along unequivocally supported a two-State solution for the Middle East. We have always held that Israel has the right to live in peace within secure borders and that the Palestinian people have the right to a viable State of their own. Neither terrorism nor the excessive use of force will help find a lasting solution in the Middle East. Neither will the wall.

The way forward, therefore, is through a negotiated settlement of the problem. Both Palestinians and Israelis must, as I said, find a modus vivendi and build bridges of trust and cooperation. More than ever before, the international community has a duty and an obligation to help find such a solution and to contribute to the establishment and maintenance of permanent peace in that troubled region.

The President: We have heard the last speaker in the debate on this item for this meeting.

I note that draft resolution A/ES-10/L.18 has been circulated to all delegations in the General Assembly Hall; action on the draft resolution will be taken next week.

The meeting rose at 4.45 p.m.